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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5974 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DAKSHABEN L PANDYA

Versus

STATE OF GUJARAT

Appearance:

MR SR BRAHMBHATT for Petitioner No. 1-45

Mr. Ketan M. Parikh, ASSISTASNT GOVERNMENT PLEADER for Respondent No. 1-2

MR SK JHAVERI for Respondent No. 3

MR MUKESH R SHAH for Respondent No. 4

..... for Respondent No. 5

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 09/08/2001

ORAL JUDGEMENT

This is a unique type of case in which an

advertisement was published for selection of teachers on 29th September, 1986. On the basis of the Government Resolution dated 31st May, 1965 wherein special subject teachers i.e. Hindi, Drawing and Physical Training were required to be appointed to the extent of 15%. By the Government Resolution dated 22nd October, 1970, the stitching or needle teachers (tailoring) were also included by way of amendment in the Government Resolution dated 31st May, 1965 as special subject teacher. On the basis of the Government Resolution dated 7th August, 1987 special subject teachers such as sewing teachers, Hindi teacher, music teacher, physical training teachers were required to be appointed in 15% ratio. After completing 15% quota of special subject teachers, if any post remains vacant, then the ratio was extended upto 20% of the total requirement and the candidates covered by 15% to 20% are termed as untrained teachers. By the advertisement, applications were invited from candidates for the selection of teachers having the qualifications mentioned therein including item no. 4 : SSC/TC/TCWCG. Various candidates applied. Interview call letters were issued on 10th December, 1986 to the candidates. After some selection procedure was adopted and a selection list of 77 candidates was prepared and intimation was sent by the District Primary Education Officer to all the candidates that they have been selected, by a leter dated 10th December, 1986. The District Primary Education Officer, wrote a letter to the Director of Education vide letter dated 8th December, 1986 for approval of the select list of 77 candidates and for the appointment of those 77 TCWCG candidates. While, the approval was pending, the District Primary Education Committee issued another advertisement on 12th September, 1987 for the PTC training teachers. By an order dated 19th December, 1991, the Government of Gujarat issued orders to the Director of Primary Education that the proposal of D.P.E. O. for the approval has been accorded and also directed to appoint 77 candidates including the petitioners. By that time, the petitioners had already filed the present petition in this Court. It was also required to be mentioned in their appointment letter that their appointment letter will be subject to the result of the petition pending in the High Court. Inspite of the approval by the Government of Gujarat, 77 candidates including the petitioners were not appointed. Though the petitioners have agitated their claim by filing this petition from the year 1987, when the second list prusuant to the advertisement dated 12.9.1987 was about to be prepared. The main cause of non-appointment of 77 candidates including the petitioners was the result of mischevious conduct of the District Primary

Education Officer
inspite of the directions of Government of Gujarat and the Director of Primary Education.

2. This petition has therefore, been filed by 45 selected candidates, lateron 6 candidates have also been joined in the petition, for a direction to the respondent authorities to appoint 77 candidates including the petitioners and till the expiry of the select list, the list prepared pursuant to the advertisement dated 12th September, 1987 be not given an effect in appointing the candidates selected pursuant to the advertisement dated 12.9.87 and for a direction to the respondent authorities not to proceed with the selection procedure pursuant to the advertisement dated 12.9.87 when the first select list prepared pursuant to the advertisement dated 29th September, 1986 was already in existence.

3. It is stated that by the Government Resolution dated 31st May, 1965, the percentage of special subject teacher was fixed to the extent of only 15% and special subject were to be treated Hindi, Drawing and Physical Training. Such requirement of ratio was to be fixed by the Education Committee as per requirements. The separate qualifications were also prescribed for Hindi subject teacher, drawing teacher, physical training teacher and tailoring teacher. It is also mentioned that subject teachers will be deemed to be equivalent to the junior PTC teachers and they will be paid as Junior Primary Teacher (JPCT). By the Government Resolution dated 22nd October, 1970 the subject teacher for stitching course (tailoring) was also included in para-2, Item No. 3 after physical training as Needle, Craft teacher. By the Government resolution dated 7th August, 1986 it was noticed by the Government that the qualified PTC candidates for PTC teachers are not available for the appointment in the tribal areas of the District either they are not available or they are not joining and reporting to be present after their appointment. It was considered that in such cases, the education of the children should not suffer adversely. Therefore, the Government has carefully taken cautious considerations and decided as per the requirement of Rules, that if PTC trained candidates are not available, other candidates should be recruited subject to the condition of availibility of PTC trained candidates. The subject teachers were required to be appointed to the extent of 15% and if there is some more requirement and the explanation in the Rules requires, there should be change in the ratio of seniority, maximum upto 20% of the requirement. It is also mentioned in the Resolution that

the candidates covered by 15% to 20%, they must be having qualification of S.S.C. and they will be treated as untrained and they were required to obtain PTC training at their own expenses and thereafter they will be treated as trained teachers. In the last, it is also mentioned that after making appointment as per existing Recruitment Rules, the remaining posts will be filled up in accordance with the aforesaid relaxation of age and qualification with prior approval of the Government, if necessary. The District Primary Education Committee issued an advertisement on 29th September, 1986. Several candidtes applied for appointment and after selection procedure, a select list of 77 candidates was prepared and those persons are also having the qualification of SSC/TCWCG. Though there was no need for getting the approval of the State Government as they are required to be appointed against 15% quota earmarked for special subject teacher. Still however, the District Primary Education Officer required the approval of the Government and sent a letter to the Director of Primary Education for appointment of 77 TCWCG candidates vide letter dated 8.12.1986. The Government of Gujarat issued orders to the Primary Education Officer on 19.12.1991 according approval of the select list and directed for the appointment of 77 candidates as the writ petition filed by the petitioners is pending in the High Court. Hence, it was also directed that the appointment be made subject to the result of the petition pending in the High Court. The District Primary Education Officer of the Panchmahals district was not interested in making the appointment of the select list. Hence, in order to avoid appointment of 77 candidates, he wrote a leter to the Director of Primary Education by his letter dated 16.1.1992 seeking guidance on the following points.

(i) Whether these candidates are to be appointed as untrained or trained teachers.

(ii) If they are to be appointed as untrained teacher, then whether such candidates are to be appointed when now trained teachers are available.

(iii) The recruitment of untrained teacher in the district is over, hence clarification on the point was necessary.

(iv) 5% subject teachers are to be appointed whereas in this case, there are 77 candidates, whether they are to be appointed as untrained teacher or not.

The Director of Primary Education, addressed a letter to the District Primary Education Officer in reply of his letter stating that the District Primary Education

Officer should comply with the direction of the Government or give cogent reasons for non-compliance or dorpping the proposal. The District Primary Education Officer again sent a letter to the Director of Primary Education in the month of February, 1992 mentioning that the permission was granted to appoint total 77 untrained teachers and directions have been given to take action for compliance at the district level. He also mentioned that the Managing Committee of the District Panchayat has made protest against such appointments as trained teachers are available. Hence, the appointment as untrained primary teachers cannot be given in compliance of the direction of the Government. He gave his opinion that the recruitment of untrained teachers can be done only to the extent of filling backlog as prescribed by the Government as required to be given to untrained teachers. Hence, he required specific orders to be obtained from the Government. The District Managing Committee has resolved to issue instructions to undertake process as per the Rules of the Government in connection with the recruitment of untrained and trained teachers. The Director of Primary Education vide his letter dated 3rd February, 1992 sent a letter to the District Primary Education Officer that the proposal made by his office dated 8.12.86 has already been sent by the facts on the facts stated therein. The office of the District Primary Education Officer is required to undertake the process for its compliance. The proposal made by his office is not required, otherwise he is required to send report alongwith his opinion for dropping the proposal with reasons for doing so. It is also mentioned in the note that the decision be taken after convening the meeting of Education Committee. The Chairman of the District Primary Education Committee made a note that now there is no need to convene the meeting as the Government has already granted permission, therefore, the process for making appointment be undertaken. Immediately on 4th February, 1992 letters were issued to all the 77 candidates for appointment as primary teachers in primary schools under District Education Committee, Panchmahals at Godhra. With reference to the letter dated 19.12.1991 addressed by the Under Secretary, Education Department, the candidates were called upon to remain present in the office of District Panchayat Education Committee, Panchmahals at Godhra at 9.00 a.m. on 7.2.1992 alongwith the original testimonials mentioned in the letters and undertaking (bond) to be prepared on the stamp paper of Rs.40/- to serve in tribal areas. Before coming of 7th February, 1992, on 6th February, 1992, at the instance of Primary Education Officer, Resolution no. 679 was passed to issue instructions to undertake proces as per rules of

the Government as may be in force for appointment of untrained and trained teachers holding that the orders for immediate recruitment of 77 candidates of TCWC was absolutely illegal and contrary to the interest of the children of Panchmahals district. Such candidates having TCWC should not be given new appointments and it was unanimously resolved to cancel the orders of the Education Department. It appears that this resolution was passed at the behest of the Primary Education Officer and he was behind this resolution. Again on 25th February, 1992 the District Primary Education Officer sent a confidential letter to the Director of Primary Education stating therein "Original proposal dated 8.12.1986 of this office for appointment of other qualified teachers is accepted by the Government vide their order dated 3.2.1991 and your office vide letter dated 3.2.92 has asked us to implement the original proposal and appointing these 77 candidates, untrained teachers is approved. At present in the district, a number of candidates having qualifications of SSC/PTC or CP.Ed. are available. Therefore, the Government has, through its Education Department ordered that these candidates having TCWCG qualifications be appointed as teachers by treating them as untrained teachers. Therefore, looking to the present circumstances, there are technical and administrative complications. Therefore, at district level, the Managing Committee also resolved to process the appointments of these candidates as per rules. In view of these, specific orders from Government are required so that their appointments could be processed. The appointments cannot be given as untrained. The District Primary Education Officer sent another letter dated 10/11.3.1992 informing that the Managing Committee of District Panchayat has passed the resolution no. 679 in the meeting held on 6.2.1992 alongwith the copy of the resolution wherein the action of the Government was held to be bad and illegal. The Director of Primary Education also sent another letter dated 2/5.4.1992 calling for explanation of the D.P.E.O. that despite clear instructions, the D.P.E. O. was required to make clarifications on the following points including

(1) What the technical questions arise for appointing proposed candidates and what is his view on the questions.

(2) What kind of administrative problems or questions were likely to arise in giving appointment to the candidates and what sort of complications were arising in the administration if such appointments are made.

(3) The District Committee has recommended

regularisation of all the candidates before appointment them what type of regularisation was required that was not clear and the regularisation and for regularisation which rules are required to be relaxed that was also not made clear.

(4) When the Government has already issued orders for appointing these candidates having TCWCG, then why DPO was insisting for still some orders, was not clear.

(5) Reasons were required to be stated for not giving them appointment as trained teachers and no clarification was made on this aspect.

(6) You have just sent the resolution of the Managing Committee, but what was his approach in the context of the rules and his report was not given by him that was not desirable and hence he should give clear opinion and views.

(7) The letter dated 26th February, 1992 was enclosed. Hence, the DPO was required to give views alongwith his report urgently.

The D.P.E. O. by his letter dated 4.5.92 replied to the Director stating therein that a detailed reply has already been offered by letter dated 25th February, 1992. The resolution dated 6th February, 1992 was clear on the points and due to resolution of the District Committee the appointments could not be given. A clarification had already been made by a letter dated 25th February, 1992. The letter dated 26th February was not enclosed and hence no reply could be made. The affidavit of the Government made on 2nd December, 1987 was required to be considered which has been filed in the petition and the order of the High Court dated 23rd January, 1989 was also to be considered. It is significant to note here that the learned A.G.P. states that he has not filed any affidavit-in-reply in this case on behalf of the respondent nos. 1 and 2.

4. One Kantibhai Trikambhai Bhil, the District Primary Education Officer of the District Primary Education Committee, Panchmahals at Godhra has filed affidavit on behalf of the respondent nos. 3 to 5. As such, the D.P.E.O. tried to mislead the Director of Education that some affidavit dated 2.12.1987 has been filed on behalf of the Government in the High Court and the order dated 23rd January, 1989 by which an interim relief granted earlier for keeping 45 posts of primary teachers vacant was vacated and it was directed that the appointments to the posts shall be subject to the result of the petition and it was also made clear that it would

be so stated in the appointment orders and in the order, it is also required to be mentioned that such appointees can apply to the High Court for being joined as respondents in the petition in order to enable such persons to contest the petition. By the order dated 23rd January, 1989 the Court has directed to appoint persons, but they are required to be informed that their appointment shall be subject to the result of the petition pending in the High Court and the appointing authority was directed to make it mentioned to inform the appointees that if they intend to contest the petition, may implead themselves in the petition as party. From the order dated 23rd January, 1989, it appears that this Court has not made any restriction on the department concerned from making any appointments of the petitioners or any other persons similarly situated. The Director of Primary Education, after considering the resolution dated 7.8.1986, the proposal dated 8.12.1986, the order of the High Court dated 23rd January, 1989 and the letter dated 9.12.1991 and the resolution no. 679 dated 6.2.1992 passed by the Managing Committee of the Panchmahals district, directed the District Primary Education Committee to give appointments to 77 candidates with a direction to mention in their appointment orders that their appointments would be subject to the decision of this petition pending in the High Court. Inspite of the orders dated 1.9.92 passed by the Director of Primary Education, the D.P.E. O. has not appointed 77 candidates of the select list. The Government of Gujarat passed the resolution dated 27th April, 1994 whereby the recruitment of 15% was reduced to 10% of the subject teachers except 5% of C.P.Ed. in the recruitment and to recruit 7% teachers of subject teachers(for the subjects of Drawing and Music). The District Panchayas, Panchmahals at Godhra sent a letter to the Deputy Secretary, Education Department on 30th June, 1994 stating that the office has obtained an opinion from the advocate of the High Court Mr. S.K.Zaveri as to whether 77 candidates should be appointed or not on 9.2.1992 that looking to the recruitment rules for primary teachers, the list of primary teachers will atuomatically stand cancelled when new list comes into existence. In his view, they cannot be appointed and he asked to wait till the final outcome of the petition. The D.P.E.O. sent a letter dated 25th August, 1994 stating that all the details have already been furnished earlier. Resolution no. 679 dated 6th February, 1992 was cancelled by resolution no. 922 dated 22nd September, 1993 and as per the proposal, the names mentioned in the select list be recommended for appointment. The Administrator vide his letter dated 21st September, 1994 sent a letter to the

Secretary, Education Department stating that the Government has granted approval for the appointment of 77 candidates vide order dated 19.12.1992. Mr. Zaveri, advocate for the Panchayat has given his opinion vide his letter dated 9.2.1992 that on the preparation of the select list, earlier select list will get cancelled automatically. Hence, the appointment of 77 persons cannot be given and he required a direction from the Government as to whether these 77 candidates are to be appointed or not and if yes, whether they are to be appointed as trained or untrained teachers. The District Panchayat Educatio Officer sent a letter to the Director of Primary Education on 31.5.1995 requesting for decision of the Government, for the appointment of 77 candidates having sewing subject.

5. No affidavit-in-reply has been filed on behalf of the respondent nos. 1 and 2. Affidavit-in-reply has been filed by Kantibhai T.Bhil, District Primary Education Officer on behalf of respondent nos. 3, 4 and 5 stating therein that the petitioners are admittedly untrained and are not eligible to be appointed to the post of P.T.C.trained teachers. There is no vacancy for the post of tailoring or sewing craft, post of physical education and drawing teachers. About 224 posts have already been filled up from amongst the list prepared in October, 1986. The petitioners being untrained teachers were kept in the select list as untrained teachers. In case of non-availibility of trained teachers, with the permission of the State Government, they could have been appointed and they were retained in the select list and they were so informed by the letter dated 10.12.1986. Now, the PTC trained teachers are available, but select list for October, 1986 was prepared for which an advertisement was given in September, 1987@ and applications were called for by 25th September, 1986. The proposal for the approval was sent up in December, 1986 to the Director for sanction of the State Government for appointment of untrained teachers, but no sanction or approval or permission from the State Government was received. But the petitioners have no right to be appointed as it has already been specifically stated in the letter communicated to them on 10.12.1986. The petitioners have no right to claim appointments even in respect of vacancies prior to July, 1987. Under the Rules, it is incumbent to prepare a select list in May and October of every year, but due to special circumstances, such list could be prepared in May, 1987 and the appointments came to be made from the select list prepared for October, 1986. Now, the list has already exhausted except in case of untrained teachers in respect

of which proposal was sent to the Director as stated earlier. No approval was received from the State Government in that regard. Under Rule 14, whether select list has exhausted or not, on preparation and finalisation of the list in May or October, earlier list lapsed and it is not incumbent upon the authorities to exhaust the previous list. In pursuant of the advertisement, interview calls were already issued and interviews had been completed. Select list is to be finalised and there are about 713 vacancies for which the list was prepared.

6. A re-joinder affidavit has been filed on behalf of the petitioners wherein it is stated that PTC colleges has not been imparting education in subjects like sewing etc. Due to their importance, the Government has resolved to recruit 15%, non-PTC teachers trained in this craft subject. The Government has already resolved to include sewing as craft subject and that has been included by the Government resolution dated 22nd October, 1970 in the Government resolution dated 31st May, 1965. The respondent no. 4 issued another advertisement on 29th September, 1986 for the appointment of primary teachers. As per the Government circular dated 7.8.1986 it was open and advisable to consider for the recruitment of non-PTC teachers due to dearth of PTC teachers. Originally, only 15% of the total vacancies of primary teachers were to be filled in by such non-PTC teachers. However, the respondent Government increased this percentage of 15% to 20% vide circular dated 7.8.1986. The District Primary Education Officer sent a communication dated 8.12.1986 making it clear that the total 619 vacancies were available. At the relevant time, there was a dearth of PTC teachers and about 619 vacancies were available. Hence, the respondents ought to have appointed the petitioners after their due selection. It is not open to the respondents to wait for indefinite period to appoint untrained PTC persons. The stand that now, PTC trained teachers are available is not available to the respondents inasmuch as at the relevant point of time, there was a dearth of PTC trained teachers. The question of sanction was solved and they will give legitimate right of the petitioner. Actually, the respondent authorities ought to have included some of the persons from sewing, craft teachers. 15% has been increased to that of 20% by circular dated 7.8.86. The respondent authorities have treated the petitioners discriminatory inasmuch as they have not been given any share in the first 15 percentage. The respondents have arbitrarily withheld sanction and there was no fault of the petitioner and hence they cannot be denied of their

right. Wrongfully withholding of the sanction cannot be pleaded against the petitioners.

7. Another additional affidavit has also been filed on behalf of the petitioners stating that the Government has accorded approval for appointment of 77 candidates by a letter dated 19.12.1991 and 77 candidates including the petitioners were called for receiving the appointment letters after production of testimonials and documents required and to furnish the undertaking on a stamp paper of Rs.40/-. The Committee passed a resolution dated 2nd February, 1992 holding that the Government's order for appointment is bad and that resolution has been cancelled by the committee itself by another resolution no. 922 in the meeting held on 22nd September, 1993. Even after the approval of the State Government, the District Panchayat cannot say that the petitioners cannot be appointed. The Gujarat Panchayat Services (Recruitment of Primary Techers) Rules, 1977 and Bombay Primary Education Act, 1947 read with Government resolution would make it clear that the selection of the present petitioners was absolutely just and proper. They ought to have been appointed as primary teachers by the respondents. Rule 14 makes it clear that the selection list is to be exhausted before any other select list is prepared. Rule 3 requires that the Administrative Officer is to prepare estimation of vacancies in the first week of March of each year and he shall prepare estimate of vacancies in the staff of primary teachers likely to assign in the district upto the end of August in the ensuing school year. He is also required to invite applications so as to reach his office on or before 1st April from the qualified candidates. Rule 14 makes it clear that the candidates from the select list prepared in May shall be appointed before the select list is prepared in October next becomes final. As in the present case, the list of 77 candidates including the petitioners was not finalised as the authority concerned has sent for approval of the State Government and that approval was not received till the receipt of the approval, the list cannot be said to have been finalised. The respondents have not shown as to under what authority of law they have withheld the appointment even after obtaining the approval from the Government vide letter dated 19.12.1991. The respondent Panchayat has not pointed out as to why the appointment orders were not issued even after issuing identical letters dated 4.2.1992.

8. Affidavit-in-reply to the additional affidavit has also been filed by the District Primary

Education Officer stating therein that the select list was prepared pursuant to the advertisement dated 29th September, 1986 for the candidates belonging to and having qualifications of TCWG which is a specialised subject. As per the circular of the State Government dated 3.7.87, the posts are required to be filled up by untrained teachers only when trained teachers are not available. If trained teachers having qualfiication of PTC are available, then candidates having qualification of TCWCG and the appointment by the untrained teachers are not permissible. After the select list was prepared, the petitioners and other candidates were not given appointment order because at the relevant time the posts were not sanctioned by the State Government. After the resolution dated 27th April, 1994, the State Government has passed a resolution and decided that in view of the fact that there is no need to fill up the post of primary teacher of sewing subject i.e. having qualification of TCWG, the primary teachers of the said subjects are not to be appointed as primary teacher. Under the circumstances, the petitioners having qualification of TCWG having sewing subject, are not required to be appointed as primary teachers even as per the Government resolution dated 27th April, 1994. Trained teachers are available and therefore, as per the resolution dated 27th April, 1994, after 27.4.1994 the post of primary teachers are not required to be filled in from the amongst the candidates who are having qualification of sewing subject-TCWG are not required to be filled. Hence, the petition requires to be dismissed. After 1987, trained teachers were available and new list was already prepared and implemented and under the Rules, one next list is permitted, old list will be lapsed automatically.

9. Heard the learned advocates for the parties. The learned counsel for the petitioners contended that the GR of 1965 prescribes qualifications for the appointment of special subject teachers, other than PTC trained and they are required to be treated as trained teacher at par with PTC teachers to the extent of 15% of the total vacancies. Needle work or stitching work course (tailoring course) was introduced in 1970 by way of amendment in the Government Resolution of 1965. The Gujarat Panchayat Service (Recruitment of Primary Teachers), Rules 1970 have been made effective from 25th June, 1970. Rule 4 of the said Rules requires that if candidates are not available, the age and qualifications can be relaxed by the District Primary Education Committee with prior approval of the Government. The submission of the learned counsel for the petitioners is that it is not contended by the respondents that the

present vacancies were notified by the District Primary Education Committee with prior approval of the Government for relaxation of age or qualification. Hence, it will be deemed that selection of the petitioenrs was under 15% quota for the appointment of special subject teachers. As such, the respondents have committed an error in treating the petitioners as untrained teachers. In view of the GR of 1965 amended by the Government Resolution dated 22nd October 197, the selection of the petitioners was made within the limit of 15% quota. They are to be treated at par with junior PTC. The respondents have erred in treating the petitioners as untrained teachers.

10. The second contention of the learned counsel for the petitioner is that the advertisement does not show that the non-PTC candidates are being invited by the notification dated 29th September, 1986 nor it is mentioned in that the selection was to be made because of non-availibility of PTC candidates. In absence of the resolution of the Committee showing that the petitioners were selected by exercising the power to relax the eligibility criteria, under Rule 4 of the Recruitment of Rules, after getting prior permission of the Government, the petitioner's selection could only be said within 15% vacancies earmarked for special subject teachers under Resolution of 1965 as amended by the GR dated 22nd October, 1970. Thus, the respondents have committed an error on the face of record in treating the selection of the petitioners on account of non-availibility of PTC teachers. It was also alternatively argued that the approval of the State Government is not required under clause-3 of GR for the selection and appointment of the petitioners. Even the approval of the Government is required which has already been accorded in 1991 vide order dated 19.12.1991. As such, the respondents are not justified in not appointing the petitioners pursuant to the select list prepared by the respondents. The next contention of the learned counsel for the petitioners is that the respondents have not shown any reason for not issuing the appointment letter pursuant to the orders dated 4.12.1992. In the facts and circumstances, the petitioners will be deemed to have been appointed on the date when other candidates of the select list prepared and those persons were appointed, alternatively from 1992 when the order was approved.

11. On the contrary, the learned counsel for the respondent nos. 3, 4 and 5 contended that the select list was prepared pursuant to the advertisement dated 29th September, 1986. According to Rule no.14 of the Gujart Panchayat Service (Recruitment of Primary

Teachers) Rules, 1970 subject to the availibility of vacancies, candidates from the select list prepared in May shall be appointed before the list prepared in October next becomes final and candidates from the select list prepared in October shall be appointed before the select list prepared in May next become final. The select list prepared in May shall lapse as soon as the select list prepared in October next is finalised and the select list prepared in October shall get lapsed as soon as the select list prepared in May next is finalised. In the present case, another advertisement was given on 12.9.87 and that advertisement was made only for PTC trained candidates. As soon as the select list pursuant to the advertisement dated 12.9.87 is finalised, the earlier select list prepared pursuant to the advertisement dated 29.9.86 will get lapsed. According to the learned advocate for the respondent nos. 3 to 5, there are certain circumstances under which the select list of 77 candidates including the petitioners was prepared for non-availibility of the PTC trained teachers and PTC teachers were available and select list was prepared pursuant to the advertisement dated 12.9.87. The earlier list pursuant to 29th September, 1986 would stand lapsed and the PTC teachers were not available. Hence, there was no need for the respondents to appoint untrained PTC teachers for special subjects. After the order of the Government dated 19.12.1991, the District Education Officer finding it difficult to appoint 77 candidates including the petitioners as PTC teachrs were available. Hence, the Primary Education Officer required the instructions and directions of the Director as well as the Government of Gujarat. The instructions and directions could not be received and in the meanwhile, the Government of Gujarat had passed a resolution dated 27th April, 1994 to the effect that there was no need for the appointment of sewing or tailoring teacher. As such, the order of the Government dated 19.12.1991 could not be complied with.

12. The learned Assistant Government Pleader for the respondent nos. 1 and 2 submitted that the Government was required to accord approval for the selection list. After perusing the material on record, the Government has completed its work by allowing the select list of 77 candidates for the appointment on the post of subject teachers. If any fault or lapse has been committed, that has been done by the respondent nos. 3,4 and 5. The Government is not responsible for the fault committed in not making the appointment of 77 candidates of the select list. The District Panchayat Committee is an autonomous body for regulating the services of PTC and

non-PTC teachers and whenever approval is required, after considering the material on record, appropriate orders for approval are passed.

13. I have considered the contentions of the learned counsel for the parties and perused the relevant papers on record. The first question which arises for decision in this petition is as to whether the persons who were in the select list have any right for appointment under the statute. In this connection, the learned counsel for the petitioners contended that the petitioners have a legal right to be considered for appointment by operating the select list though they might not have any legal right to get the appointment and that is vested with the authority concerned. However, the authority arbitrarily refused to appoint persons in the select list and such refusal is so unreasonable that the Courts are not helpless in rendering justice to the affected parties. He relied on the decision of the Division Bench of this Court in the case of Nagar Prathmik Shikshan Samiti, Baroda vs. Kanchanben Dahyabhai Mistri and others reported in 1991(1) GLR, 1. After discussing the decisions of the Supreme Court as well as proposition of law of foreign countries, the Division Bench came to the conclusion that the appellant has arbitrarily and unjustifiably refused to issue appointment orders to the respondent. He also relied on the decision of this Court in the case of Popatbhai Ramjibhai Mogharia and others vs. District Judge, Surendranagar reported in 1993(3) GLR, 1539 wherein when the applications were invited, the candidates were within age limit, but when the appointments were to be made at that time, the petitioners were overaged. Hence, the petitioners of that case were bypassed and the matter remained pending for a long time. This Court, on the basis of the observations made by the Supreme Court in the case of Shankarsandas vs. Union of India reported in 1991(3) SCC, 47 came to the conclusion that on the face of it, the impugned action of the respondents being quite illegal and unjust, the same deserves to be quashed and set aside. This Court has held as under :

> "8.2 To briefly summarize, the answer to the three questions raised at the commencement of this judgment it may be stated that (i) once the candidate is found to be within the prescribed age limit on the date of publication of advertisement and/or thereafter even on the date of publication of the select list and further still, for no fault of the candidate, he become over-aged, then merely on that ground, he cannot

be denied his rightful appointment (ii) in case any candidate duly enlisted on the select list, if he is dropped from being considered on the ground of he having crossed the upper age limit at the relevant time of his appointment, then in that case, he has a right to be informed about the same and the competent authority is under corresponding obligation of its own immediately inform him, and (iii) High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution while issuing the writ of mandamus directing the respondent to give appointment to the petitioners with retrospective effect, in cases like the present one, is not competent to give further directions for payment of full back wages to the appointees, and that what it could do at the most is to direct the concerned appointee to make suitable application in the said regard to the Appointing Authority, who in its turn after holding necessary inquiry may pass appropriate orders regarding payment of back wages due."

14. The learned counsel for the respondent nos. 3 to 5 has not cited any authorities on the point that the petitioners cannot claim the appointment on the basis of the select list prepared pursuant to the advertisement dated 29th September, 1986. I am in full agreement with the contentions of the learned counsel for the petitioners that the petitioners are entitled to claim their appointment on the basis of the select list, more particularly when the respondents have denied their right, unreasonably and without any sufficient cause.

15. The next question which arises for decision in this case is whether the petitioners were selected in 15% of the total vacancies earmarked for the special subject teachers. In this connection, the Government resolution dated 7th August, 1986 shows that the Government had noticed that in tribal areas, the qualified PTC candidates for PTC teachers are not available, and if available, they are not joining and reporting to present or tribal areas after the appointment. They are not presenting or reporting to be present and it appears that the Government was noticing that the PTC teachers were not ready to work in the remote tribal areas of the district. Hence, the eucation of the children was adversely affected. Therefore, the Government carefully considered the aspect regarding PTC teachers in the tribal areas of the District and it was

considered that if PTC trained candidates as per requirement of the Rules are not available, other candidates are to be recruited on the condition that till PTC trained teachers are available they are required to be appointed. On the basis of this condition incorporated in the Government resolution dated 7.8.1986, the contention of the learned counsel for the respondents was that the select list was prepared pursuant to the advertisement dated 29th September, 1986 for appointment of non-PTC till the availibility of PTC trained teachers. But this Government resolution dated 7.8.87 itself provides under clause-3 that the teachers for special subject teaching Hindi, Music, Physical, Sewing, needle or stitching are required to be appointed to the extent of 15% and it is also found that in case there remains any other vacancy, then the ratio will be extended to the maximum limit of 20%. Further proviso states that the candidates covered by 15% to 20% are required to have then having qualification of SSC and they will be treated as untrained teachers, they were also required to obtain PTC training at their own expenses for being considered as trained teachers. The resolution dated 31st May, 1965 provides for appointment of teachers for special subject teachers upto the extent of only 15%. Stitching or sewing has been introduced by way of amendment by the Government resolution dated 22nd October, 1970. As such, the sewing or stitching or needle course teachers are also included as subject teachers under Government resolution of 1965 and special subject teachers are required to be appointed to the extent of 15% as a matter of right and they are not left to the discretion of the department concerned. Had the quota of 15% earmarked for special subject teachers, been not fixed, the selection list of the petitioners could have been stated that they were selected as untrained teachers for triable areas under Resolution dated 7.8.1986. As fixed quota of 15% has been earmarked for special subject teachers and pursuant to the Government resolution, the advertisement was made on 29th September, 1986 and it is not mentioned in the advertisement that their appointment would be subject to availibility of P.T.C. trained teachers. As such, it cannot be said that the petitioners and others were selected for the appointment as untrained teachers till availibility of the trained PTC teachers. It has not been contended on behalf of the respondents that the petitioners and others were not selected from the quota of 15% to 20%. Therefore, from the assertions made in the petition as well as affidavits filed by the respondents, it clearly reveals that the petitioners' selection was made as special subject teachers pursuant to the advertisement dated 29th September, 1986. Even in

the advertisement dated 29th September, 1986, it has not been mentioned at all that the selection of the candidates would be subject to availibility of the trained PTC teachers. Had it been made clear in that advertisement dated 29th September, 1986, the petitioners and others would not have been ready to apply for the subject teacher as required by this advertisement.

16. In the present case, the select list of 77 candidates including the petitioners was prepared pursuant to the advertisement dated 29th September, 1986. Though the Government resolution dated 7.8.86 does not require prior approval of the Government for the appointment of the petitioners, though special permission of the Government has been required under clause-1 where PTC trained candidates who had reached maximum age limit, but who have not crossed maximum 40 years of age, if they are recruited, then special permission from the Government was required. As such, under Government resolution, no approval is required. However, it is mentioned in the last of this resolution that after making appointment according to the existing recruitment rules, the remaining posts will be filled up in accordance with the aforesaid relaxation, previous approval of the Government, if required and if necessary. Under Rule-4, the eligibility criteria for appointments of candidates is prescribed and the candidates must (i) be not less than 18 years and not more than 25 years of age (ii) in the case of candidates belonging to Scheduled castes or Scheduled Tribes be not less than 18 years and not more than 30 years of age and (B) and had passed in one or more of the qualifications of the examination as specified in Schedule-A annexed to the Rules provided, the committee may if candidates fulfilling the qualifications as specified in clauses A and B are not available relaxe qualifications specified in clauses A and B with prior approval of the State Government. Nothing has been produced by the learned counsel for the respondents on record to show that prior approval was obtained by the Committee for selection of the petitioners on relaxed criteria of age and qualifications. As such, prior approval is not required for appointment of the 77 candidates including the petitioners. Even the Government has accorded approval on 19.12.1991 and it is mentioned in the letter dated 19th December, 1991 of the Under Secretary, Education Department that with respect to the letter dated 30th Janaury, 1988 on the subject in respect of the appointment to the post of primary teachers on other qualifications candidates in the District Panchayat it is to be informed that 77 candidates mentioned in the select

list annexed to the aforesaid letter are approved for recruitment. As the present petition had already been filed in this Court and that was pending and due to pendency of that petition, clarification was made that the appointments of 77 candidates will be subject to the final order of the High Court to be made in the present petitions. It was also directed that other 32 candidates who are not party in this petition, should be issued appointment orders mentioning that they should become party to the proceedings. If those 32 candidates do not make any application to the High Court for becoming party in the aforesaid proceedings, then in order to avoid future complications, appropriate representation be made after consulting Government pleader making them party. The Director of Education directed the District Primary Education Officer to comply with the directions of the State Government or to give cogent reasons for non-compliance or dropping the proposal. The Director of Primary Education, after considering the Education Committee's resolution no. 679 dated 6th February, 1992 directed the District Primary Education Committee to appoint all the 77 candidates as per Government order dated 19.12.1991 and subsequent order passed by the Committee cancelling earlier resolution and requiring appointments. The Managing Committee of the District Panchayat by resolution no. 922 dated 22nd September, 1993 cancelled resolution no. 679 dated 6th February, 1992 and it was further resolved to request the Government to give appointment to the teachers mentioned in the proposal. Still however, the District Primary Education Officer mischeviously has not implemented the orders of the Government and of the Director of Education and even the resolution of the Committee on one or other ground.

17. The District Primary Education Officer by his letter dated 4.2.1992 issued letters to 77 selected candidates informing that they were required to be present in the office of District Education Department on 7.2.92 alongwith original testimonials mentioned in the letter and with a bond of Rs.40/- stamp paper and that letter shows that the candidates were required to be present for receiving appointment letters.

18. From the facts and circumstances stated above, it appears that there is no fault on the part of the petitioners or other candidates. It was a fault on the part of the District Primary Education Officer who appears to be bent upon not to give any appointment letter to the petitioners or any other candidates on one or other ground. In the facts and circumstances, the

respondent nos. 3, 4 and 5 were not justified in law in refusing legal right on unreasonable ground innot giving appointment letters to the petitioners and their action is arbitrary and unreasonable.

19. The learned counsel for the petitioners also made a request to adjust the petitioners on the post of Vidyasahayak scheme. For that purpose, time was granted to the learned counsel for the respondent nos. 3 to 5 to verify and ascertain whether the petitioners can be accommodated even as Vidyasahayak in which fixed salary/consolidated amount of Rs.2500/- is given to them. But after receiving instructions from the District Panchayat, the learned counsel for the respondent nos. 3 to 5 submitted that the District Panchayat is not ready to accommodate or adjust the petitioners in any scheme or even as untrained teachers.

20. Considering the facts and circumstances of the case, the petitioners could not be appointed due to arbitrary action of D.P.E.O. on one or other ground and they are agitating their claim since 1987. There is no fault on their part. It is a systemic delay as the matter remained pending and could not be heard. In the facts and circumstances, the petitioners have lost much more and suffered a lot of mental agony due to the hanging of their litigation for a long period inspite of the Government order to appoint them. The petitioners' right was arbitrarily and unreasonably denied by the respondent nos. 3 to 5. When the select list was prepared under the existing Rules and Government resolutions, they have been denied the right by unlawful action of the respondent nos. 3 to 5. They have not given appointments to the petitioners and others. In the facts and circumstances of the case, I hold that the petitioners were entitled to be appointed under 15% earmarked for special subject teachers on this post. Pursuant to the Government resolution dated 27.4.94, there is no work for sewing teacher, as such, they cannot be appointed on this post. However, they deserve to be posted on the post of untrained teachers for special subjects. In my view, the respondents should be directed to appoint them as untrained teacher for the special subject and if there is a need of training, the respondents will send them for training for being treated as trained teachers.

21. Thus, this petition deserves to be allowed. Accordingly, this petition is allowed. The respondent nos. 3, 4 and 5 are hereby directed to appoint the petitioners from 19.12.1991 notionally when

the Government approved the proposal of the Managing Committee of the District Panchayat for appointment of the petitioners. Though the petitioners are entitled for some compensation, but since they had not been appointed and worked for any period, they are not entitled for any back wages. The respondents are directed to appoint the petitioners as untrained teachers forthwith, if there is need of training, they will send the petitioners for training. Rule is made absolute accordingly. Exemplary costs deserve to be allowed to the petitioner. However, token amount of Rs.100/- to each of the petitioners is required to be paid by the respondent nos. 3 to 5 within a period of three months by way of costs.

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